In the Supreme Court of the United States

OCTOBER TERM, 1971

No. 71-826

967,905 ACRES OF LAND IN COOK, LAKE AND ST. LOUIS COUNTIES, MINNESOTA, ET AL., PETITIONERS

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

We respectfully invite the Court's attention to the following facts which show that the petition was filed out of time.

On September 23, 1971, the court of appeals denied a petition for rehearing (Pet. App. A-23), and the judgment of the court was entered on that day. The 90-day period for filing a petition for a writ of certiorari prescribed by 28 U.S.C. 2101(c) expired on December 22, 1971, and no extension of time was granted. The petition for a writ of certiorari was filed on December 23, 1971. Since the statutory time limitation is jurisdictional, the petition should be denied.

457-290—72——1

Petitioners correctly point out (Pet. 2) that the court of appeals modified its opinion, at the government's request, on October 1, 1971 (Pet. App. A–24). This did not, however, alter the date of the court's judgment. By its own terms, the modification concerns only the court's opinion, not its judgment. Moreover, the modification did nothing more than change a few words to correct a factual error in the court's original opinion. This did not affect any matters of substance or the parties' rights, and therefore the time to petition for a writ of certiorari did not begin to run anew. *Federal Trade Commission* v. *Minneapolis-Honeywell Co.*, 344 U.S. 206, 209–213; *Department of Banking* v. *Pink*, 317 U.S. 264.

Respectfully submitted.

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FEBRUARY 1972.